

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LAVORIS UNDERDUE,
Plaintiff,

v.

KENNETH S. APFEL, Commissioner of
Social Security,
Defendant.

Civil Action
No. 95-5119

Gawthrop, J.

November 3, 1997

M E M O R A N D U M

Before the court is Plaintiff's Motion for Interim Benefits pursuant to Fed. R. Civ. P. 60(b)(6). For the following reasons, I shall deny Plaintiff's Motion.

I. Background

On October 13, 1992, Plaintiff Lavoris Underdue, formerly Lavoris Rooks, applied with the Social Security Administration for disability insurance benefits. See 42 U.S.C. §§ 401-433. The Commissioner initially denied Plaintiff's claims, and this court affirmed that decision. In response to Plaintiff's motion for reconsideration, however, this court vacated the prior decisions denying benefits and remanded the case on August 2, 1996. Plaintiff now requests modification of this Court's order, under Fed. R. Civ. P. 60(b)(6), to require the Commissioner to pay interim benefits.

Plaintiff also states that the failure of Kenneth S. Apfel, who succeeded John J. Callahan as Commissioner of Social Security, to rule on her remanded action within a reasonable period of time has caused irreparable harm and violates the Due Process Clause of the Fifth Amendment. Plaintiff claims that this court should grant her request for interim benefits due to the "unreasonable and unconscionable administrative delays." She further alleges that the court has inherent power to craft such a remedy, and that no statutory authority specifically bars the court from granting such relief.

II. Discussion

When a party files a motion under Fed. R. Civ. P. 60(b)(6) within a reasonable time, the court may grant relief from a final order or judgment for any reason justifying relief, other than mistake, newly discovered evidence, fraud, voidness, or satisfaction. The remedy provided is "extraordinary, and special circumstances must justify granting relief under it." Moolenaar v. Government of Virgin Islands, 822 F.2d 1342, 1346 (3d Cir. 1987) (citations omitted). Defendant argues that no such circumstances exist in this case. I agree. While Plaintiff states that she is indigent, her claims do not rise to the level of extraordinary or special circumstances. See Saltares v. Bowen, 711 F.Supp. 162, 165 (S.D.N.Y. 1989) ("Plaintiff's financial straits, though moving, cannot be the basis for awarding interim benefits."). Further, her claims of financial

hardship must be balanced against the potential for "premature judicial intervention in an administrative system that processes literally millions of claims every year." Heckler v. Ringer, 466 U.S. 602, 627 (1984).

Congress has provided an extensive administrative scheme to review social security disability benefit claims. Judicial intervention into the administrative process at this stage would be premature since, under § 405(g) of the Act, this court no longer retains jurisdiction over her claim. See Shalala v. Schaefer, 509 U.S. 292 (1993) (holding district court remanding case pursuant to sentence four of Social Security Act judicial review provision may not retain jurisdiction over administrative proceedings on remand).

Plaintiff maintains that the Social Security Act does not expressly bar the award of interim benefits in an initial entitlement action such as this one. Instead, the Act permits the payment of interim benefits in very limited situations. See Taylor v. Heckler, 769 F.2d 201, 202 (4th Cir. 1985) (noting § 423(g) "authorizes interim benefits to individuals appealing the termination of their disability benefits on account of an official determination that they are no longer disabled"); see also Doughty v. Bowen, 839 F.2d 644, 646 (10th Cir. 1988) (noting "Section 2(e) of the Social Security Disability Benefits Reform Act of 1984" and § 423(g) "allow a district court remedial power to direct payment of interim benefits during the remand of a termination case even if the individual has not elected to

receive benefits") (citation omitted). These statutory sections do not, however, expressly authorize courts to award interim benefits in "original entitlement" cases in which the claimant has not been certified disabled, and benefits have never been awarded. See Doughty, 839 F.2d at 647 (finding legislative directives do not grant district court power "to direct payments of interim benefits when the individual has never been certified disabled and entitled to benefits"). Thus, the government correctly states that, while the Act does not expressly bar the court from granting such relief, it also does not explicitly empower the court to do so.

While the plaintiff asserts that it is within the broad remedial powers of the court to award interim benefits, the government counters that the judicial review provision precludes this court from awarding interim benefits before a final opinion by the Secretary in this case. The case law on point supports the government's position. See Doughty, 839 F.2d at 647 (concluding "district court cannot use its remedial power to order interim disability payments for a person initially denied benefits"); Taylor, 769 F.2d at 202 ("Where Congress has made specific provision for interim benefits in a restricted context, we think that, similarly, it does not lie with the courts, for whatever worthy purposes, to order their payment in other contexts of this pervasively regulated area.").

Plaintiff relies on decisions which have awarded interim benefits to claimants as a result of administrative

delay. In these decisions, however, the unreasonable delay generally is attributable to the Secretary. See, e.g., Davenport v. Bowen, 709 F.Supp. 634, 635 (E.D.Pa. 1989) (finding "when a claimant is deprived of his right to a timely answer due to the Secretary's inability to locate files under his control, there is a prima facie case for interim benefits"); Mason-Page v. Bowen, 655 F.Supp. 255, 258 (D.N.J. 1987) (finding "egregious delay" prolonged by "the loss of plaintiff's testimony due to inaudible audio tape recording and the unavailability of Administration medical advisors"). The facts of this case, however, do not justify such an award. The record does not contain any evidence of egregious or outrageous behavior by the Secretary that would compel the award of interim benefits. See Mullen v. Secretary of Health and Human Servs., 878 F.Supp. 682, 686 (D. Del. 1995) ("The Court is unable to conclude on the facts of this record that the conduct of the Secretary here is so unreasonable, egregious or outrageous as would justify an award of interim benefits.").

Nor is the delay so unreasonable that it amounts to a deprivation of due process. See West v. Bowen, 879 F.2d 1122, 1128 (3d Cir. 1989) (rejecting plaintiff's claim "that the length of time it takes SSA to reach a determination that a person is disabled amounts to a denial of due process, because no food stamp payments are made during the interval"). Thirteen months have passed since this court ordered a remand of Plaintiff's claim. This time lag, while not commendable, is not actionable.

See Littlefield v. Heckler, 824 F.2d 242, 247 and n.7 (3d Cir. 1987) (finding nine-month delay, as well as five year span from initial application, did not violate due process); see also Heckler v. Day, 467 U.S. 104, 111 (1984) ("Congress repeatedly has been made aware of the long delays associated with resolution of disputed disability claims and repeatedly has considered and expressly rejected suggestions that mandatory deadlines be imposed to cure that problem."). Moreover, according to the Defendant's response, the Commissioner has agreed to expedite treatment of Plaintiff's case on remand.

The government argues that the plaintiff seeks to use Rule 60(b)(6) to circumvent the administrative process and to have this Court review her claim before she has exhausted her administrative remedies. See Pitchess v. Davis, 421 U.S. 482 (1975) (holding Rule 60(b)(6) cannot alter statutory command requiring exhaustion of state remedies as pre-requisite to habeas corpus relief). I agree that plaintiff's remedy lies within the administrative agency, and not with this court. Accordingly, I shall deny Plaintiff's request for interim benefits.

An order follows.

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O R D E R

AND NOW, this day of November, 1997, upon
consideration of Plaintiff's Motion for Interim Benefits and
Defendant's Response thereto, Plaintiff's Motion is hereby
DENIED.

BY THE COURT

Robert S. Gawthrop, III, J.